



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
NUTRI-BLEND, INC.  
FOR  
BIOSOLIDS STORAGE ACTIVITY  
IN GOOCHLAND AND CUMBERLAND COUNTIES  
VPA Permits No. VPA00806, VPA00847, VPA03005, and VPA03006**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Nutri-Blend, Inc., regarding biosolids storage activity in Goochland and Cumberland Counties for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9 VAC 25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight. 9 VAC 25-32-10.

3. "Cumberland Permit" means VPA Permit No. VPA03006 which was issued under the State Water Control Law and the Regulations to Nutri-Blend, Inc. on April 29, 2010 and which expires on April 28, 2020.
4. "Cumberland Routine Storage Permit" means VPA Permit No. VPA03005 which was issued under the State Water Control Law and the Regulations to Nutri-Blend, Inc. on March 11, 2010 and which expires on March 10, 2020.
5. "Cumberland Routine Storage Site" means the roofed routine storage facility located at 473 Salem Church Road in Cumberland County, Virginia, where Nutri-Blend manages pollutants which are the subject of the Cumberland Routine Storage Permit.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means discharge of a pollutant. 9 VAC 25-32-10.
9. "Facilities" means, in regard to biosolids, processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management including, but not limited to, handling, treatment, transport, and storage of biosolids. 9 VAC 25-32-10.
10. "Goochland On-Site Storage Site" means the unroofed on-site storage facility located at 2801 Chapel Hill Road in Goochland County, Virginia, where Nutri-Blend manages pollutants which are the subject of the Goochland Permit.
11. "Goochland Permit" means VPA Permit No. VPA00806 which was issued under the State Water Control Law and the Regulations to Nutri-Blend, Inc. on October 28, 2009 and which expires on October 27, 2019.
12. "Goochland Routine Storage Site" means the roofed routine storage facility located at 2801 Chapel Hill Road in Goochland County, Virginia, where Nutri-Blend manages pollutants which are the subject of the Goochland Routine Storage Permit.
13. "Goochland Routine Storage Permit" means VPA Permit No. VPA00847 which was issued under the State Water Control Law and the Regulations to Nutri-Blend, Inc. on November 4, 2014 and which expires on November 3, 2024.
14. "Land Application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater, referred to as "effluent," stabilized sewage sludge, referred to as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a

uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with the Regulations are not to be considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of the Regulations, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application. 9 VAC 25-32-10.

15. "O&M" means operations and maintenance.
16. "On-site storage" means the short-term storage of biosolids on a constructed surface within a site approved for land application at a location preapproved by the department (9VAC25-32-10). The VPA Regulation does not require that on-site storage facilities be roofed; however, the permit holder must utilize best management practices as appropriate to prevent contact with storm water run on or runoff. 9 VAC 25-32-550.
17. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
18. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
19. "Nutri-Blend" means Nutri-Blend, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Nutri-Blend is a "person" within the meaning of Va. Code § 62.1-44.3.
20. "Nutrient Management Plan" or "NMP" means a plan prepared by a Virginia certified nutrient management planner to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, or other materials containing plant nutrients in order to reduce nutrient loss to the environment and to produce crops. 4 VAC 50-85-10.
21. "Odor Control Plan" or "OCP" means a plan developed by a biosolids generator or land applier that includes: methods used to identify malodorous biosolids at the generating facility before land application; methods used to identify and abate malodorous biosolids in the field prior to land application; methods used to abate malodorous biosolids if land applied.
22. "O&M" means operations and maintenance.
23. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
24. "Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,

rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. 9 VAC 25-32-10.

25. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9 VAC 25-32-10.
26. "Regulations" means the VPA Permit Regulation, 9 VAC 25-32-10 *et seq.*
27. "Routine storage" is the long-term storage of biosolids at a facility not located at the site of the wastewater treatment plant, preapproved by the department and constructed specifically for the storage of biosolids to be applied at any permitted site. 9 VAC 25-32-550.
28. "Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface. 9 VAC 25-32-10.
29. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
30. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
31. "Supernatant" means a liquid obtained from separation of suspended matter during sludge treatment or storage. 9 VAC 25-32-10.
32. "Va. Code" means the Code of Virginia (1950), as amended.
33. "VAC" means the Virginia Administrative Code.
34. "VPA" means Virginia Pollution Abatement.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Nutri-Blend is a biosolids management company which regularly transports and applies biosolids from regional wastewater treatment plants to application sites. Nutri-Blend utilizes on-site and routine storage facilities to store biosolids during periods when land application is not possible due to field conditions. Nutri-Blend stored biosolids at the

Goochland On-Site Storage Site, the Goochland Routine Storage Site, and the Cumberland Routine Storage Site.

2. On December 7, 2018, the DEQ received a letter from the Virginia Association of Municipal Wastewater Agencies (VAMWA) and the Virginia Biosolids Council (VBC) describing an emergency situation related to the availability of storage for biosolids due to the extraordinary weather conditions in 2018. The letter noted the following:
  - a. A November 7, 2018 National Oceanic and Atmospheric Administration report stated that 2018 has been the fifth wettest year on record for the United States; several Virginia localities may near or break all-time precipitation records.
  - b. Excessive precipitation made it difficult for contractors to access farmland and beneficially apply biosolids on a normal schedule and at a normal pace.
  - c. Biosolids that would typically be on farm fields by December were in storage.
  - d. Permitted biosolids storage facilities managed and operated by land application contractors were at or nearing full capacity.
  - e. Storage space at wastewater treatment plants was also at or nearing full capacity.
  - f. The Virginia Biosolids Council investigated landfilling biosolids as an option, but stated that Virginia's landfills are increasingly reluctant to accept biosolids. They have traditionally served as a resource to mitigate storage challenges during emergency weather conditions.
  - g. Land application contractors would be asking DEQ for emergency assistance and coordination in managing the unusual emergency situation, including coordinating on regulatory compliance approaches and procedures.
3. National Oceanic and Atmospheric Administration data for 2018 exhibited the following characteristics:
  - a. For the 12 months ending February 7, 2019 at the Richmond International Airport, there were 187 days with precipitation.
  - b. Much-above-average to record-high precipitation fell across much of the contiguous U.S. east of the Rockies. Nine eastern states (Delaware, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Tennessee, Virginia and West Virginia) experienced their wettest year on record.
4. During prolonged periods of wet weather, landfills must limit the intake of materials with significant moisture content, including biosolids.
5. On December 26, 2018, DEQ responded to the December 7, 2018 letter from VAMWA and VBC, and stated that DEQ intended to utilize consent orders issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and permit holders requesting a variance, in lieu of approving such a variance.

#### **Goochland On-Site Storage Site**

6. The Goochland On-Site Storage Site is an unroofed on-site storage facility and is the subject of the Goochland Permit which allows Nutri-Blend to store biosolids in strict

compliance with the terms and conditions of the Goochland Permit. The Goochland On-Site Storage Site is located directly adjacent to the Goochland Routine Storage Site.

7. The Goochland On-Site Storage Site is owned by the Four-L Corporation.
8. DEQ approved the use of the Goochland On-Site Storage Site for on-site storage on March 8, 2016, in accordance with conditions of the Goochland Permit and the materials submitted by Nutri-Blend with the approval request.
9. On December 11, 2018, DEQ received a variance request from Nutri-Blend requesting a variance to the conditions of the Goochland Permit. The request noted extraordinary wet weather in Virginia and associated challenges for Nutri-Blend related to storage and challenges in moving material to landfills. The request specified the following:
  - a. Nutri-Blend proposed to use the Goochland On-Site Storage Site in the manner specified in the Goochland Permit, except that:
    - i. the time of storage would exceed 45 days,
    - ii. beneficial use of material will be on other sites and not limited to those owned or operated by the Four-L Corporation.
    - iii. storage amounts would not be limited by the nutrient management plan for the on-site farm since it would be spread on other locations; and
  - b. Nutri-Blend would use the site in this manner through April 30, 2019.
10. Per DEQ's December 26, 2018 letter, DEQ informed Nutri-Blend that it would negotiate a consent order in lieu of a variance.
11. On December 20, 2018 and January 10, 2019, Department staff conducted inspections at the Goochland On-Site Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Permit. Through observations and questioning of the certified land applier during the inspection, DEQ staff ascertained the following:
  - a. Biosolids were present on the on-site storage site;
  - b. Biosolids were not covered;
  - c. The certified land applier indicated that on-site storage of biosolids had begun on December 12, 2018.
  - d. Biosolids had been stacked with a loader and did not exhibit any evidence of run-off.
12. On March 18, 2019, Department staff conducted an inspection at the Goochland On-Site Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Permit. Through observations during the inspection, DEQ staff ascertained the following:
  - a. The biosolids stored on the site measured an average of approximately 5 feet high and are uncovered.

- b. Some cake biosolids had fallen over the rear jersey barrier wall and into an adjacent grass pasture field included in the Goochland Permit for land application (Tract 934, Field 10).
  - c. The owner's biosolids storage manifest documented 4,716.48 wet tons of biosolids present on the storage site that was first placed on the site on December 12, 2018, 96 days before the date of the inspection.
  - d. The owner indicated that the biosolids were being hauled off the site to another farm site for land application, not owned or operated by the Four-L Corporation.
  - e. Some supernatant that was comingled with the biosolids was leaving the site through spaces between the jersey barriers and running into Tract 934, Field 10.
  - f. All evidence observed indicated that the supernatant leaving the site remained in the field.
  - g. Following a request for all records related to storage at the on-site storage site, the owner/certified land applier did not produce any inspection records following rainfall events.
13. On April 24, 2019, Department staff conducted an inspection at the Goochland On-Site Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Permit. Through observations during the inspection, DEQ staff ascertained the following:
- a. The biosolids stored on the site were uncovered.
  - b. All biosolids stored on the site were within the jersey barrier wall, and all biosolids that had fallen over the wall had been removed.
  - c. Approximately 75% of the biosolids that were present on site during the March 18, 2019 inspection had been removed. The owner's biosolids storage manifest documented that of the 4,716.48 wet tons of biosolids that was present on the storage site on March 18, 2019, 1151.14 wet tons remained. The remaining biosolids were placed on the site on December 12, 2018, 138 days before the date of the inspection.
  - d. The owner indicated that the biosolids were still being hauled off the site to another farm site for land application, not owned or operated by the Four-L Corporation.
  - e. Following a request for all records related to storage at the on-site storage site, the owner/certified land applier did not produce any inspection records following rainfall events.
14. On May 14, 2019, Nutri-Blend reported via phone that all biosolids had been removed from on-site storage.
15. Part I.G.2 of the Goochland Permit specifies the following operational requirements for on-site storage:
- a. The certified land applier shall notify DEQ within the same working day whenever it is necessary to implement on-site storage. Notification shall include the source(s), location, and amount(s) of biosolids to be stored;

- b. Storage shall be limited to the amount of biosolids specified in the NMP to be applied at sites under the operational control of the same owner or operator of the site where the on-site storage is located;
  - c. If malodors related to the stored biosolids are verified by DEQ at any occupied dwelling on surrounding property, the problem shall be corrected within 48 hours following DEQ's notification to the permittee, or the biosolids must be removed from the storage site;
  - d. All biosolids stored on the on-site storage pad shall be land applied by the 45th day, including the first day of on-site storage;
  - e. Best management practices shall be utilized as appropriate to prevent contact of the biosolids with storm water run on or runoff;
  - f. The certified land applier shall inspect the stored biosolids at least every seven days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order. The certified land applier shall maintain documentation of inspections of stored biosolids;
  - g. Observed excessive slumping, erosion, or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the storage site is to be eliminated and any malodor shall be addressed in accordance with the OCP. The certified land applier shall maintain documentation of the conditions observed and the corrective actions taken;
  - h. Storage of biosolids shall be managed so as to prevent adverse impacts to water quality public or health.
16. The DEQ Approval of Biosolids On-Site Storage dated March 8, 2016 for the Goochland Permit specifies that biosolids will be covered at all times while in on-site storage.
17. On May 21, 2019, the Department issued NOV No. W2019-05-C-0001 to Nutri-Blend based on its observations at the Goochland On-Site Storage Site.
18. On May 22, 2019, Department staff conducted an inspection at the Goochland On-Site Storage Site and observed that the Site was in compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Permit.

#### **Goochland Routine Storage Site**

19. The Goochland Routine Storage Site is a roofed routine storage facility and is the subject of the Goochland Routine Storage Permit which allows Nutri-Blend to store biosolids in strict compliance with the terms and conditions of the Goochland Routine Storage Permit. The Goochland Routine Storage Site is located directly adjacent to the Goochland On-Site Storage Site.
20. On December 20, 2018 and January 10, 2019, Department staff conducted inspections at the Goochland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Routine Storage Permit. Through observations during the inspection, DEQ staff ascertained the following:



- a. The storage facility was full and biosolids were stockpiled outside of the routine storage facility.
  - b. No evidence of biosolids run-off was observed.
21. On January 15, 2019, Nutri-Blend submitted a monthly report for the Goochland Routine Storage Permit stating that 2,762.63 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
22. On February 15, 2019, Nutri-Blend submitted a monthly report for the Goochland Routine Storage Permit stating that 4,506.45 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
23. On March 14, 2019, Nutri-Blend submitted a monthly report for the Goochland Routine Storage Permit stating that 4,315.02 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
24. On March 18, 2019, Department staff conducted an inspection at the Goochland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Routine Storage Permit. Through observations during the inspection, DEQ staff ascertained the following:
  - a. Approximately one-half of the biosolids in storage were not under roof, were exposed to stormwater, and were only contained by three sides of the concrete facility.
  - b. A small amount of supernatant was inside the covered storage facility.
  - c. There was no evidence of a supernatant discharge.
25. On April 15, 2019, Nutri-Blend submitted a monthly report for the Goochland Routine Storage Permit stating that 3,002.66 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
26. On April 24, 2019, Department staff conducted an inspection at the Goochland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Routine Storage Permit. Through observations during the inspection, DEQ staff ascertained the following:
  - a. A portion of the stored biosolids remained outside of the roofed structure.
  - b. According to the owner's biosolids manifest, of the 3,207.91 wet tons of biosolids that were present in storage during the previous inspection on March 18, 2019, approximately 2,673.25 wet tons of biosolids now remain.
  - c. There was no supernatant present in the covered storage facility and there was no evidence of a supernatant discharge.
  - d. The owner did not provide any records of inspections of stored biosolids.
27. On May 14, 2019, Nutri-Blend reported via phone that there were no biosolids stored outside the covered structure.

28. On May 15, 2019, Nutri-Blend submitted a monthly report for the Goochland Routine Storage Permit that did not indicate any biosolids were stored outside the permitted area.
29. Part I.D.1 of the Goochland Routine Storage Permit specifies that the permittee shall implement and maintain a Biosolids Management Plan which includes an O&M manual, and that the O&M manual is an enforceable part of the Goochland Routine Storage Permit.
30. The O&M Manual for the Goochland Routine Storage Permit specifies that the facility design prevents any excess water or material from leaving the enclosed building.
31. Part I.F.4.f of the Goochland Routine Storage Permit specifies the following:
  - a. A certified land applier will routinely inspect the storage facility when biosolids are being stored to ensure the biosolids and any supernatant are contained within the structure.
  - b. Observed excessive slumping or movement of biosolids is to be corrected to prevent movement out of the structure.
  - c. The certified land applier shall record documentation of inspections of stored biosolids in the facility log book.
32. On May 21, 2019, the Department issued NOV No. W2019-05-P-0002 to Nutri-Blend based on its observations at the Goochland Routine Storage Site.
33. On May 22, 2019, Department staff conducted an inspection at the Goochland Routine Storage Site and observed that the Site was in compliance with the requirements of the State Water Control Law, the Regulations, and the Goochland Routine Storage Permit.

#### **Cumberland Routine Storage Site**

34. The Cumberland Routine Storage Site is a roofed routine storage facility and is the subject of the Cumberland Routine Storage Permit which allows Nutri-Blend to store biosolids in strict compliance with the terms and conditions of the Cumberland Routine Storage Permit.
35. On December 11, 2018, DEQ received a variance request from Nutri-Blend requesting on-site storage of biosolids at the Cumberland Routine Storage Site. The request noted extraordinary wet weather in Virginia and associated challenges for Nutri-Blend related to storage and challenges in moving material to landfills. The request specified the following:
  - a. Nutri-Blend proposed to construct an 85' X 200' pad on property located at the Cumberland Routine Storage Site.
  - b. The storage pad would be constructed using a clay base, covered by an impermeable liner, which would be covered with No. 3 stone, 21a stone and then topped with stone dust. All of this material would then be compacted with a vibratory roller.

- c. Concrete containment walls would be erected around the pad at approximately 4-5 feet in height and would encompass three sides of proposed pad. The pad, as proposed, would be surrounded with straw bales for environmental protection.
  - d. Management of the pad would continue in the manner specified in the VPA Permit Regulation related to on-site storage except that:
    - i. the time of storage would exceed 45 days;
    - ii. beneficial use of material will be on other sites and not limited to the Cumberland Routine Storage Site (owned by Nutri-Blend);
    - iii. storage amounts would not be limited by the nutrient management plan for the on-site farm since it would be spread on other locations; and
  - e. Nutri-Blend would use the pad in this manner through April 30, 2019.
36. Per DEQ's December 26, 2018 letter, DEQ informed Nutri-Blend that it would negotiate a consent order in lieu of a variance.
37. On December 20, 2018, Department staff conducted an inspection at the Cumberland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Cumberland Routine Storage Permit. Through observations during the inspection, DEQ staff ascertained the following:
- a. The storage facility was full and biosolids were stockpiled outside of the routine storage facility.
  - b. No evidence of biosolids run-off was observed.
38. On January 10, 2019, Department staff conducted an inspection at the Cumberland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Cumberland Routine Storage Permit. Through observations and questioning of Nutri-Blend staff during the inspection, DEQ staff ascertained the following:
- a. Biosolids were being stored inside the storage facility and outside of the storage facility on a recently constructed unroofed gravel storage pad.
  - b. No evidence of biosolids runoff was observed;
  - c. Nutri-Blend staff had placed straw bales at the tree line downslope from the unroofed gravel storage pad.
  - d. A stacking machine was located onsite. Nutri-Blend staff indicated that the stacker would be utilized once enough space was created within the facility to allow its use.
39. On January 15, 2019, Nutri-Blend submitted a monthly report for the Cumberland Routine Storage Permit stating that 2,678.21 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
40. On February 15, 2019, Nutri-Blend submitted a monthly report for the Cumberland Routine Storage Permit stating that 4,790.86 wet tons of biosolids were stored outside the permitted area in a non-compliant location.

41. On March 14, 2019, Nutri-Blend submitted a monthly report for the Cumberland Routine Storage Permit stating that 7,287.8 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
42. On March 18, 2019, Department staff conducted an inspection at the Cumberland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Cumberland Routine Storage Permit. Through observations during the inspection, DEQ staff ascertained the following:
  - a. Nutri-Blend erected an approximately 5-6 foot tall jersey barrier wall around three sides of the perimeter of an unroofed gravel storage pad located adjacent to the covered routine storage facility.
  - b. The biosolids stored on the unroofed gravel storage pad measured approximately 8-9 feet high.
  - c. According to the owner's biosolids storage manifest, there were 7,287.8 wet tons of Piscataway Wastewater Treatment Plant (WWTP) biosolids present on the unroofed gravel storage pad. Material was first placed on the pad on 12/18/2018, 90 days prior to the date of the inspection.
  - d. There was a supernatant comingled with the biosolids at the entrance/exit of the unroofed gravel storage pad. This supernatant was draining towards a drain that is connected to underground tanks, which Nutri-Blend staff stated are pumped out periodically.
  - e. The inspectors also observed leachate coming from underneath the east side jersey walls, eventually draining to a storm water basin. This storm water basin has an outfall pipe that discharges into an unnamed tributary of Willis River. The outfall pipe had a slime/algae substance covering the rocks. The water had a rust like color and resembled an oil sheen.
  - f. Following a request for all records related to storage at the unroofed gravel storage pad, Nutri-Blend staff did not produce any inspection records of the pad following rainfall events.
43. On April 15, 2019, Nutri-Blend submitted a monthly report for the Cumberland Routine Storage Permit stating that 8,313.87 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
44. On April 22, 2019, Department staff conducted an inspection at the Cumberland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Cumberland Routine Storage Permit. Through observations during the inspection, DEQ staff ascertained the following:
  - a. The biosolids stored on the unroofed gravel storage pad measured approximately 8-9 feet high.
  - b. According to the owner's biosolids storage manifest, Piscataway WWTP biosolids were present on the unroofed gravel storage pad. Material was first placed on the pad on December 18, 2018, 126 days prior to the date of the inspection.
  - c. There was a supernatant comingled with the biosolids at the entrance/exit of the unroofed gravel storage pad. This supernatant is draining towards a drain that is

- connected to underground tanks, which Nutri-Blend staff stated are pumped out periodically.
- d. The inspectors also observed leachate coming from underneath the east side jersey walls, eventually draining to a storm water basin. This storm water basin has an outfall pipe that discharges into an unnamed tributary of Willis River. The outfall pipe had a foam build at the pipe outfall. The water had a rust like color and resembled an oil sheen.
  - e. Biosolids stored on the unroofed gravel storage pad had a septic/musty smell that was more odorous than that which the inspector observed on March 18, 2019.
45. On May 14, 2019, Nutri-Blend reported via phone that the biosolids stored on the unroofed gravel storage pad had been covered.
46. On May 15, 2019, Nutri-Blend submitted a monthly report for the Cumberland Routine Storage Permit stating that 6,946.2 wet tons of biosolids were stored outside the permitted area in a non-compliant location.
47. Nutri-Blend did not report the runoff to the Department. Neither the monthly activity reports that Nutri-Blend submitted for March and April 2019, nor any other correspondence from Nutri-Blend during March and April 2019 acknowledged runoff or leachate from the uncovered storage of biosolids.
48. Part I.C.2 of the Cumberland Routine Storage Permit requires that "all pollutant management activity covered under this permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. The operation of the facilities of the owner permitted herein shall not contravene the Water Quality Standards, as adopted and amended by the Board, or any provision of the Water Control Law."
49. Part I.D.2. of the Cumberland Routine Storage Permit requires that all biosolids storage shall be conducted inside the enclosed building.
50. Part II.F. of the Cumberland Routine Storage Permit requires that except in compliance with the Cumberland Routine Storage Permit, or another permit issued by the Board, it shall be unlawful for any person to:
- a. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
  - b. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.
51. Part II.G. of the Cumberland Routine Storage Permit requires that any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or

who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge. The written report shall contain:

- a. A description of the nature and location of the discharge;
- b. The cause of the discharge;
- c. The date on which the discharge occurred;
- d. The length of time that the discharge continued;
- e. The volume of the discharge;
- f. If the discharge is continuing, how long it is expected to continue;
- g. If the discharge is continuing, what the expected total volume of the discharge will be; and
- h. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

52. The unnamed tributary of Willis River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
53. Part I.H.1 of the Cumberland Permit requires that on-site storage of biosolids be conducted on a site approved for land application at a location preapproved by the Department.
54. The Cumberland Routine Storage Site is included in the land application area authorized by the Cumberland Permit.
55. DEQ has not preapproved the Cumberland Routine Storage Site for on-site storage.
56. On May 21, 2019, the Department issued NOV No. W2019-05-C-0002 to Nutri-Blend based on its observations at the Cumberland Routine Storage Site.
57. On May 21, 2019, Department staff conducted an inspection at the Cumberland Routine Storage Site for compliance with the requirements of the State Water Control Law, the Regulations, and the Cumberland Routine Storage Permit. Through observations during the inspection, DEQ staff ascertained the following:
  - a. There were biosolids stored on the unroofed gravel storage pad. There were five tarps that are 50 feet by 100 feet covering most of the material. There was no tarp covering approximately 30 feet of material. Nutri-Blend staff stated that they were loading trucks from the uncovered section.
  - b. According to the owner's biosolids storage manifest, Piscataway WWTP biosolids were present on the unroofed gravel storage pad. Material was first placed on the pad on December 18, 2018, 154 days prior to the date of the inspection.
  - c. The inspectors also observed leachate coming from underneath the east side jersey walls, eventually draining to a storm water basin. This storm water basin

has an outfall pipe that discharges into an unnamed tributary of Willis River. The outfall pipe had a foam build at the pipe outfall.

58. On July 25, 2019, Department staff conducted a focused site inspection of the unroofed gravel storage pad at the Cumberland Routine Storage Site. Department staff observed that there were 753.22 wet tons of biosolids from the Piscataway WWTP remaining on the unroofed gravel storage pad. Department staff also observed a leachate collection system that had been installed in early June 2019 on the west side of the unroofed gravel storage pad to supplement the existing leachate collection system for the covered building. On the north, east and west sides of the pad there had been grass seeding and hay mulch applied. There was no leachate observed from the pad.
59. On July 30, 2019, Nutri-Blend staff notified the Department that all Piscataway WWTP biosolids would be removed from the unroofed gravel storage pad by the end of the day.
60. On August 1, 2019, Department staff conducted a focused inspection of the unroofed gravel storage pad at the Cumberland Routine Storage Site and observed that there were no Piscataway WWTP biosolids remaining on the pad. The Piscataway WWTP biosolids were on the temporary storage pad from December 18, 2018 to July 30, 2019, a total of 227 days.

#### All Sites

61. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: (1) discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances....".
62. 9 VAC 25-32-30 states that: "All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. The Regulation also states that: "[E]xcept in compliance with a VPA permit, or another permit issued by the board, it shall be unlawful for any person to...discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances...".
63. The Department has issued no permits or certificates to Nutri-Blend for the Goochland On-Site Storage Site, Goochland Routine Storage Site, or Cumberland Routine Storage Site other than VPA Permits No. VPA00806, VPA00847, VPA03005, and VPA03006.
64. On June 5, 2019, Department staff met with representatives of Nutri-Blend to discuss the violations. During the meeting and in a letter provided on June 14, 2019, Nutri-Blend stated that the dark colored water in the ditches and stormwater basin is the result of tannins that are characteristic of the site, which has low permeability and is subject to significant stormwater runoff. According to Nutri-Blend, similar conditions were observed before biosolids were ever present at the Site. Nutri-Blend also stated that inspections were conducted regularly on the site since the unroofed gravel storage pad

was built but acknowledged that they were not made available at the time of the Department inspections.

65. During the meeting on June 5, 2019, Nutri-Blend also stated that it was not placing any additional biosolids on the unroofed gravel storage pad and that it was removing those biosolids first. Nutri-Blend also noted that it was grading the inside of the unroofed gravel storage pad so that more supernatant/leachate would be directed to the tanked collection system.
66. On June 14, 2019, Nutri-Blend provided copies of inspections conducted for odor, noise, and road conditions at the Cumberland Routine Storage Site. These inspections were conducted on various days between December 2018 and May 2019. The inspections did not mention conditions at the unroofed gravel storage pad.
67. Based on the results of the inspections, monthly reports, and follow-up information, the Board concludes that Nutri-Blend has violated:
  - a. Goochland Permit Part I.G.2, as described in paragraphs C.6-18, above.
  - b. Goochland Routine Storage Permit Part I.D.1 and Part I.F.4.f, as described in paragraphs C.19-33, above.
  - c. Cumberland Routine Storage Permit Part. I.C.2, I.D.2, II.F, II.G and Cumberland Permit Part I.H.1 as described in paragraphs C.34-57, above.
68. In order for Nutri-Blend to return to compliance, DEQ staff and representatives of Nutri-Blend have agreed to a Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Nutri-Blend and Nutri-Blend agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218



Nutri-Blend shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Nutri-Blend shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Nutri-Blend for good cause shown by Nutri-Blend, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2019-05-C-0001, dated May 21, 2019; NOV No. W2019-05-P-0002, dated May 21, 2019; and NOV No. W2019-05-C-0002, dated May 21, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Nutri-Blend admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Nutri-Blend consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Nutri-Blend declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Nutri-Blend to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Nutri-Blend shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Nutri-Blend shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Nutri-Blend shall notify the DEQ Division Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Division Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Nutri-Blend. Nevertheless, Nutri-Blend agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Nutri-Blend has completed all of the requirements of the Order;
  - b. Nutri-Blend petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Nutri-Blend.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Nutri-Blend from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Nutri-Blend and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Nutri-Blend certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Nutri-Blend to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Nutri-Blend.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Nutri-Blend voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Jeffery A. Steers, Director, Division of Enforcement  
Department of Environmental Quality

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Nutri-Blend voluntarily agrees to the issuance of this Order.

Date: 8/21/19 By: [Signature] (Person) V. P. (Title)

Commonwealth of Virginia  
City/County of Henrico

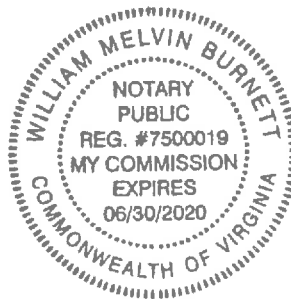
The foregoing document was signed and acknowledged before me this 21<sup>st</sup> day of  
August, 2019, by David Simons who is  
Vice President of Nutri-Blend on behalf of the corporation.

William M. Burnett  
Notary Public

7500019  
Registration No.

My commission expires: 6/30/2020

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

**1. Requirement #1**

No later than 15 days from the effective date of this Order, Nutri-Blend shall amend the O&M Manual for the Goochland Routine Storage Site to include the minimum frequency of inspections described in Part I.F.4.f of the Goochland Routine Storage Permit.

**2. Requirement #2**

By the 15<sup>th</sup> day of each month through December 15<sup>th</sup>, 2019, Nutri-Blend shall submit copies to DEQ of the inspections conducted by a certified land applier of inspections of stored biosolids at the Goochland On-Site Storage Site, Goochland Routine Storage Site, and Cumberland Routine Storage Site. The inspections at the Goochland Routine Storage Site shall be conducted at the frequency specified in the amended O&M Manual. The inspections at the Goochland On-Site Storage Site and Cumberland Routine Storage Site shall be conducted at least every seven days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order.

**3. Requirement #3**

By December 31, 2019, if Nutri-Blend plans to store biosolids at the Cumberland Routine Storage Site in excess of the capacity of the existing roofed structure, Nutri-Blend shall submit a request for a certificate to construct additional routine storage at the site.

**4. DEQ Contact**

Unless otherwise specified in this Order, Nutri-Blend shall submit all requirements of Appendix A of this Order to:

Kristen Sadtler  
Water Enforcement Manager  
VA DEQ – Central Regional Office  
1111 East Main Street  
Richmond, VA 23219  
804-698-4149  
Kristen.sadtler@deq.virginia.gov